IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2666 OF 2004

Mrs. Punam Arora ... Petitioner

versus

Citibank N.A. and another ... Respondents

...

Mr. Namjoshi, Senior Counsel, i/by Kirit J. Hakani, for the Petitioner.

Mr. K.G. Menon with Mr. K. Jagore i/by Vikram Philips & Associates, for Respondent No.1.

Mr. R.Y.Mirza, A.P.P., for Respondent No.2.

...

CORAM : A.M.KHANWILKAR,J.

3rd February 2005

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Jagore waives notice for Respondent No. 1. Mr. Mirza, A.P.P., waives notice for Respondent No.2. As short question is involved, petition taken up for final disposal forthwith by consent.

2. Petitioner has been named as accused No. 3 in criminal case instituted by the Respondent No. 1 in the Court of the Metropolitan Magistrate, 9th Court, Bandra, Mumbai, being Case No. 352/SW/2004 for offence punishable under sections 420, 422 read with section 120-B of the Indian Penal Code. The Petitioner has been named accused mainly because she happens to be Director of the Datapro Info-world Limited, which is stated to have committed the alleged offence. According to the Petitioner, she is not concerned with the day to day affairs and working of the company though she was director of that company. The Petitioner further asserts that, in fact, she has resigned from the said company in 2002. What is relevant for our purpose is that the Petitioner has approached this Court with specific plea that even if the complaint is read as a whole, it does not make out any offence insofar as the Petitioner-accused No.3 is concerned. This is the limited controversy which needs to be examined.

3. The fact whether the Petitioner has

already resigned from the said company or not cannot be the basis for quashing of the criminal action, as that is the matter for trial. To examine the limited controversy before this Court, with the assistance of the Counsel appearing for the parties, I have gone through the complaint as filed as well as the verification statement. All that has been mentioned so as to implicate the Petitioner as accused No. 3 is that she was director of the company at all material times and all the accused have been collectively and actively looking after the affairs of the said company. Reliance was placed on the allegation in para 12 of the complaint, which asserts that, "on a further scrutiny of the stock statements and debtors' list as of February 28, 2002 for the period April 2001 to February 28, 2002, which were given to the said Bank on behalf of the accused, and on a comparison of the Balance Sheet of the said Company for the relevant period, viz., March 31, 2002, it was discovered that all the accused in conspiracy between themselves and other unknown persons, have transferred monies on various false pretexts such as purchase of equipment and

software for huge amounts, which were immediately written off as indicated by the balance sheets, keeping the said Bank in the dark completely." Besides this assertion, no other allegation can be found so as to indicate the complicity of the Applicant. Taking the aforesaid allegations as it is, in my opinion, it is not possible to take the view that any case has been made out against accused No. 3 in the complaint, which could have been the basis for issuance of summons to the accused No. 3. Recently, I had occasion to examine the question as to when offence is committed by a company, what are the requirements so as to impicate the director of the company or, in other words, to make him responsible for the offence committed by the said company, in the case of Vijay Mallya v. State of Maharashtra and another, Criminal Application No. 4827 of 2004, etc., decided on 22nd December 2004. Applying the same principle, I see no basis to sustain the action against the Petitioner-accused No.3 as presently advised.

4. Indeed, Counsel for the Respondent No. 1 invited my attention to the documents, income-tax

assessment order in particular, at page 108, to contend that in view of the said documents, the complicity of Petitioner, who is accused No. 3 is made out. However, as mentioned earlier, the complaint and the verification does not specifically spell out the complicity of the Petitioner-accused No.3.

5. The petition should, therefore, succeed, but with an observation that if the complainant succeeds in bringing evidence on record during the trial, which would indicate the complicity of the Petitioner in the commission of the crime, it will be open to the trial Court to proceed against the Petitioner in accordance with law. This observation is made on the basis of exposition of the Apex Court in Municipal Corporation of Delhi v. Ram Kishan Rohatgi and others, reported in A.I.R. 1983 S.C. 67 (para 19). With this observation, the petition succeeds in terms of prayer clause (a) so far as the Petitioner-accused No. 3 is concerned.

(A.M.KHANWILKAR,J.)